



COMMUNITY  
BROADCASTING  
ASSOCIATION OF  
AUSTRALIA

## Podcast On Demand Terms & Conditions

These terms and conditions govern a Community Radio Broadcasting Station's (Station) subscription to the Community Broadcasting Association of Australia (CBAA).

### 1. Service

1.1 The CBAA will provide the station with a subscription to its Podcasting On Demand Service which includes access to Triton Digital's Omny Studio Platform product suite, including access to one copy of the Recording Agent software with 50gb of storage.

1.2 The Station acknowledges that the Omny Studio software will automatically erase the Station's oldest audio content it has stored on its audio logger to make space to record new audio content, once the audio logger reaches its maximum capacity of 672 hours of audio content.

1.3 The Station must not use the Omny Studio software to podcast or make available for download any audio content that infringes the exclusive rights of any owner of copyright material. For the avoidance of doubt, the Station must not include music in any audio content it makes available to podcast providers and for download, unless it holds the right to reproduce the music in this way.

1.3 CBAA will provide the Station with support in accordance with CBAA's Support Policy available on the CBAA website.

1.4. Minimum Service Requirements can be found in the CBAA Technical requirements available on the CBAA website.

1.5 The Station agrees to be bound by the Omny Studios terms of service found on the [Omny Studios website](#).

1.6 The Station agrees to be bound by the Triton Services Terms and Conditions in Annexure A.

### 2. Licence & Licence Term

2.1 When the station subscribes to the service, the station purchases a non-exclusive subscription to use that service (Subscription) commencing on the date set out in agreed start date. The Subscription may not be sub-licensed or assigned by the station to any third party.

2.2 The term of each Subscription is twelve (12) months (Term) or until the end of the closest financial year ending on 30 June, whichever comes sooner (subject to the rights of termination set out in these terms and conditions).

2.3 Each Term automatically renews for a further twelve (12) month period unless, no later than thirty (30) days prior to the end of the applicable Term, the station advises CBAA in writing that the station does not wish to continue using the subscription beyond the Term. There is no limit to the number of Terms for which a subscription may be renewed.

### 3. Fees

3.1 The station agrees to pay CBAA the fees for the Service. The Fees payable by the station will be as set out in agreed initial invoice value (Fees).

3.2 CBAA will periodically review the Fees applying to the Service however once the station has purchased the Subscription the fees will not increase in that Term.

3.3 Fees must be paid in accordance with CBAA's Payment Policy available on the [CBAA website](#).

### 4. Station Conditions of Use

4.1 The Stations use of the Service is conditional on the station:

- a. using the Service in a lawful, conscientious and professional manner, according to any standards that normally apply to it.
- b. ensuring that the station's access to and use of the Service does not infringe any rights of third parties.
- c. having the necessary skills and experience and holding all necessary qualifications to do so.
- d. complying with CBAA's reasonable directions when accessing and using the Service.
- e. not doing anything which may directly or indirectly impair the good name or business of CBAA.
- f. keeping the stations operating systems up to date to ensure compatibility with the Service and its associated software.
- g. complying with the Community Radio Broadcasting Codes of Practice

- h. complying with these terms and conditions and any included Services Annexures

## 5. Authority to Act

5.1 The Station grants CBAA the authority to act on the stations behalf in any dealings relating to the Service. The Station agree to only deal with CBAA in relation to all matters pertaining to the Service (including for the purposes of obtaining technical and administrative support).

## 6. Termination

### 6.1 Termination without cause

Subject to clauses 6.2, CBAA may terminate any Subscription for convenience at any time by providing thirty (30) days' written notice to the Station.

### 6.2 Termination for Breach

CBAA may (in its discretion) terminate any Subscription with or without notice to the Station if you breach these terms and conditions, or any conditions in a Service Annexure.

- a. If CBAA exercise its termination rights in this clause, then CBAA may, in its discretion.
  - i. remove the Station's access to the Service affected by the breach; or
  - ii. suspend or remove the Stations access to any other Services subscribed to the station (regardless of whether that other Service is affected by the breach); and
- b. CBAA will not refund to the Station any payments it has made for the Subscription CBAA suspends or terminates as a consequence of exercising CBAA's rights under this clause.

### 6.3 No liability

If any Subscription is terminated, suspended, or reduced in scope for any reason:

- a. CBAA will not be liable to pay the station compensation for any loss of profit or benefits that the station would have received had the termination, suspension or reduction in scope not occurred; and
- b. the termination, suspension or reduction in scope will not limit, or adversely affect, any other right or remedy that may be available to the Station or accrued to the CBAA at the date of termination, suspension or reduction in scope.

## 7. Intellectual Property Rights

### 7.1 Ownership of Intellectual Property

Each party shall retain all Intellectual Property Rights in its Intellectual Property and nothing in these terms and conditions or Service Annexures transfers ownership in, or otherwise grants any rights in, a party's Intellectual Property to the other party.

### 7.2 Metrics

- a. The Stations grant CBAA access to the stations digital metrics and data created by the station use of the Service.
- b. The Station acknowledge that:
  - i. CBAA is the sole owner of all Intellectual Property Rights in any metrics created and processed by the service and any data provided to the station and
  - ii. the metrics created and processed by the Service may be disclosed by CBAA to third parties on an aggregate and anonymous basis.

### 7.3 Technology

The Station will not, directly or indirectly:

- a. attempt to determine source code for computer programs owned or licenced by CBAA.
- b. modify, reprogram, translate, disassemble, decompile or otherwise reverse engineer Intellectual Property owned or licenced by CBAA.
- c. remove, modify or obscure any Intellectual Property Rights owned or licenced by CBAA.

### 7.4 Intellectual Property Warranty

The Station warrants that it holds all the rights and necessary licenses to ensure that its actions will not result in the violation or infringement of any Intellectual Property Rights of CBAA or any third party.

## 8. Confidential Information

### 8.1 Confidential Information

In these terms and conditions, Confidential Information means any of the following in relation to a party:

- a. Its information, documentation and materials.
- b. Its ideas and strategies (including unpublished intellectual property).
- c. Any information relating to its finances or other business information; and
- d. any other information that a party designates as being confidential or which by its nature the other party ought reasonably to be aware is of a confidential nature,

but does not include any information which is in the public domain (otherwise than by a breach of a party of its obligations of confidentiality).

## 8.2 Disclosure

Neither of the parties may disclose any Confidential Information owned by the other except:

- a. as authorised by the other party.
- b. to an employee or agent of the other party, on a “need to know” and confidential basis.
- c. if it is generally available in the public domain, otherwise than as a result of a breach of these terms and conditions by a party.
- d. as required by law or a court order; or
- e. in accordance with any parliamentary or constitutional convention.

## 9. Privacy

9.1 The Station must comply with the CBAA’s privacy policy available on the [CBAA website](#), and all privacy obligations under any law or regulation, including the Privacy Legislation.

## 10. Indemnity

### 10.1. Station Responsibility

To the extent permitted by law, the Station holds CBAA harmless and releases CBAA from any liability relating to any loss or damage that the Station may suffer in connection with these terms and conditions or Service Annexure. The Station is solely responsible for its use of and access to the Service. This includes where there are any claims, actions, suits or disputes arising from:

- a. infringement of Intellectual Property Rights.
- b. claims of defamation or injury to a third party.
- c. breach of the Privacy Legislation or any other statutory or common law.
- d. the acts or omissions of any third party,
- e. Any failure, faults or outages to the Service or
- f. failure, loss or damage to content or equipment, arising from the Stations use of, or access to the Service.

### 10.2 Indemnity

The Station indemnify CBAA and its personnel from any liability whatsoever suffered or incurred by CBAA or its personnel arising out of or in respect of these terms and conditions, including as a consequence of.

- a. The stations negligence, wrongful act or omission or breach of duty (or that of the stations personnel).
- b. any breach by the Station or its personnel of these Terms and Conditions
- c. any claim that the use the Service by the station or its personnel infringes the Intellectual Property Rights of any person.

## 11. Dispute Resolution

### 11.1 Dispute resolution process

CBAA must use its best endeavours to attempt to settle any dispute in relation to the agreement between the parties in a cooperative and practical manner, in accordance with the CBAA Dispute Resolution Policy available on the [CBAA website](#).

## 12. General Conditions

### 12.1 Jurisdiction

This agreement is governed by and construed in accordance with all applicable laws in force in the state of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of the state of New South Wales.

### 12.2 Relationship between the parties

Nothing in this agreement will make the Station (or any of the Stations personnel) a partner, agent or employee of, or for the CBAA.

### 12.3 Further assurances

Each party must execute such further documents and do all such further things as may be necessary to implement and carry out the intent of this agreement.

### 12.4 non-merger of provisions

A provision of this agreement which can and is intended to operate after its conclusion will remain in full force and effect.

### 12.5 Entire Agreement

With the exception of any Service Annexures, this agreement is the entire agreement between the parties and supersedes all other communications, negotiations, arrangements, and agreements, whether verbal or written, between the parties in respect of the subject of this agreement.

#### 12.6 No Amendments without agreement

CBAA reserve the right, at its sole discretion, to change, modify, add, or remove portions of this agreement (including any Service Annexures) at any time. CBAA will publish the amended terms on the CBAA website and email a notice of such publication to the Station. The Stations continued use of the Service following the posting of changes will be deemed as acceptance by the Station of the updates.

#### 12.7 Execution

The parties agree that this agreement may be executed electronically.

#### 12.8 Consultation

The CBAA agrees to consult and engage with the station in accordance with the CBAA Member and Stakeholder Engagement Framework, available on the [CBAA website](#).

#### **Annexure A.**

#### **Annexure A Triton Services – Terms and Conditions**

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